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IN THE

Supreme Court of the United States

No. 73-348

JESSE S. BAGGETT, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Jesse S. Baggett petitions for a Writ of Certiorari to review the Judgment and Opinion of the United States Court of Appeals for the Fourth Circuit, entered in this cause on July 26, 1973.

OPINION BELOW

The Opinion of the Court of Appeals is not yet officially reported. It is reprinted in the Appendix hereto.

JURISDICTION

The Opinion of the United States Court of Appeals for the Fourth Circuit was originally filed on June 19, 1973. A timely Petition for Rehearing was filed on July 3, 1973 and on July 26, 1973 the Court of Appeals denied the Petition for Rehearing. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The District Court's jurisdiction was invoked under 18 U.S.C. § 3231.

QUESTIONS PRESENTED

1. Whether Petitioner, Jesse S. Baggett, may properly be convicted of violation of 18 U.S.C. § 1952 (The Travel Act) for allegedly causing (under 18 U.S.C. § 2) the interstate movement of a check from a co-defendant, Ralph D. Rocks, from the District of Columbia to himself in Maryland for the purpose of promoting bribery, where Petitioner at no time traveled across state lines; where he was not shown to have mailed or caused mailing or transportation across state lines of the check; where both Petitioner and the co-defendant were Maryland residents; and where the check was drawn on a Maryland bank and delivered to a Maryland farm equipment company.

2. Whether in presenting evidence of the "intent" of Petitioner in a federal prosecution, the Government may introduce evidence of an alleged prior offense for which Petitioner had previously stood trial and of which he had been acquitted on the merits by a Circuit Court of the State of Maryland.

3. Whether Petitioner's right to confrontation was denied by the trial judge's order forbidding cross-examination or disclosure to the jury that a key Govern-

ment witness who was a federal prisoner and was suffering from Hodgkins disease had his medicine withheld for a period of several days surrounding the Government's negotiations with him to persuade him to testify against Petitioner.

STATEMENT

a. Proceedings Below

Petitioner, Jesse S. Baggett, and co-defendant, Ralph D. Rocks, were charged in a single count indictment by a federal grand jury in the District of Maryland on December 19, 1969 with violation of the Travel Act, 18 U.S.C. § 1952 and 18 U.S.C. § 2. The indictment charged that Petitioner, formerly a member of the Board of County Commissioners of Prince George's County, Maryland and Ralph D. Rocks, also a Maryland resident, had caused the movement of a Rocks Engineering Company check from the District of Columbia to Maryland into Petitioner's possession with the intent to promote bribery of Petitioner by Rocks. The check was drawn on a Maryland bank and was payable to a tractor company located in Harwood, Maryland (Govt. Ex. 1). The case was tried to a jury from October 4, 1971 to October 27, 1971.

b. Summary of the Evidence

The duties of the Prince George's County Maryland Board of County Commissioners of which Petitioner was one of five members included review of zoning applications. Co-defendant Ralph D. Rocks was a long time friend of Petitioner and was during the years in issue a developer in Maryland who had a number of zoning applications before the Commissioners. (Tr. 1002)

The Government presented no specific evidence of wrongful conduct by Petitioner or any attempt by him to influence any other Commissioner in any Rocks zoning cases. (A. 152-157). However, a tractor purchased by Rocks, with Petitioner's assistance, for use on Rock's projects was also used on Petitioner's farm on several occasions between 1965 and 1967. (Tr. 1005-1006, 1019, 1096).

The Government charged that the interstate movement of the check used to purchase the tractor constituted the interstate travel proscribed by the Travel Act. However, no evidence was offered to prove how the check moved from the District of Columbia to Maryland. Nor was there evidence that at any time prior to the movement of the check Petitioner knew of it, or that he knew Rocks would perform any act in the District of Columbia or elsewhere outside the State of Maryland. Resolving all inferences in favor of the Government, Petitioner and Rocks could at worst be found to have intended to purchase a tractor from a dealer in Maryland. There is no basis to infer that Petitioner might anticipate that Rocks would act through any of the corporations he owned or that, of his several corporations, it would be an out of state firm whose check would be used.

The Court of Appeals concluded that "The Government's evidence did not show a specific quid pro quo from Baggett to Rocks in return for the $3,500 check". (App. 2a) Nevertheless, the Government argued that there was a string of successful Rocks zonings. In fact the list of Rocks zonings showed many unsuccessful zonings due to withdrawals and to adverse rulings on requested zoning changes, some of which in-

cluded votes by Petitioner against the zonings requested by Rocks. (Jt. App. 127-129; 190-191; 100 Deft's Ex. 28).

The Government also introduced evidence of alleged "prior similar offenses". One of the prior offenses was the performing of work on an addition to Petitioner's home by a former close friend of his, Daniel Tessitore, in 1965.[1] Tessitore testified that, although he did not tell Petitioner, he in fact performed the work in the hopes of obtaining assistance on a pending zoning application. (Jt. App. 76-78). As a result of charges made by Tessitore, Petitioner had earlier been tried for bribery in a Maryland state court in 1967 and, after testifying in his own defense was acquitted on the merits as outlined in the Opinion of the Maryland Circuit Court admitted in evidence at trial in the case at bar. (Jt. App. 162-166). The state court held that Petitioner had not demanded a bribe, and he "took no part in the approval of this zoning." (Jt. App. 166). Although Petitioner "was subjected to severe cross-examination, his demeanor was that of one who did not possess a guilty conscience." (Jt. App. 166)

The Government called William Stevens as a Government witness and granted him immunity from prosecution. Stevens was a federal prisoner at the time of trial serving a term for tax evasion. He was incarcerated in a prison hospital because he was suffering from Hodgkins disease, a cancerous blood

[1] Evidence of paving done at Petitioner's farm and of a claimed gift of a small saunette and a loan to Petitioner were also introduced as other offenses although Petitioner was never charged with any such offenses.

disorder. Stevens required large doses of predizone several times a day to keep his disease in remission. Without the medicine he quickly went out of remission and broke out in bumps all over his body. (Jt. App. 67-71; 135-147) At the time of trial Stevens had a motion pending for early release from prison due to his potentially fatal illness. The Government advised him it would acquiesce in his motion if he testified truthfully against Petitioner.

The defense learned that shortly before trial Stevens' medicine had been withheld from him for a period of several days while the Government conducted the negotiations with him that persuaded him to testify against Petitioner. When the defense attempted to bring this motivation of Stevens' to the attention of the jury, however, the trial court forbade any such cross-examination. The defense filed a written motion for a mistrial and a hearing was held which confirmed that Stevens' medicine had in fact been withheld from him. However, the court still refused to let the jury hear or consider this evidence.[2] (Jt. App. 148)

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[2] Another instance of denial of cross-examination occurred during the testimony of Daniel Tessitore, who had been promised immunity from prosecution "for any crimes, evidence of which may be revealed by your testimony". (Jt. App. 94) The Jencks Act statements of Tessitore furnished to Petitioner during trial disclosed that one such offense for which he likely sought that immunity was his consistent failure to file federal income tax returns. He had informed the Government that he had not filed federal income tax returns "since 1965". (Jt. App. 215) The trial court barred defense cross-examination to reveal this evidence of motive. Thus, both Stevens and Tessitore were allowed to testify without impeachment as to these compelling motives to fabricate.

REASONS FOR GRANTING THE WRIT

1. The Use of Evidence of an Alleged Offense of Which Petitioner has Previously Been Acquitted in State Court Was a Denial of Rights under the Fifth Amendment Double Jeopardy Clause

The introduction into evidence against Petitioner of an alleged bribe of which a Maryland Circuit Court had found Petitioner innocent is fundamentally unfair. Petitioner urged that it violated the Fifth Amendment's double jeopardy clause and the principle of constitutional collateral estoppel. The Court of Appeals rejected the argument stating that Petitioner "was not being tried for that, . . ." (App. 3a). This conclusion misstates the Fifth Amendment principle of constitutional collateral estoppel announced in *Ashe* v. *Swenson,* 397 U.S. 436 (1970). Even if a defendant is not tried for the very offense of which he was acquitted, collateral estoppel bars the use of the prior offense of which he was acquitted, as evidence against him in a later case. *Wingate* v. *Wainwright,* 464 F.2d 209 (5th Cir. 1972).

This case presents a major question of criminal procedure heretofore addressed directly only by two appellate courts: whether evidence of a prior offense can be introduced against an accused in a federal prosecution despite the fact that he was acquitted of it on the merits by a state court of competent jurisdiction.

The Fifth Circuit has ruled that prior offenses are rendered inadmissible by the Fifth Amendment double jeopardy bar at least where both the prior acquittal and the current prosecution are in the same state. *Wingate* v. *Wainwright,* 464 F.2d 209 (5th Cir. 1972). The Fourth Circuit had earlier held that a

prior offense of the accused was admissible against him in a federal prosecution despite the fact that he had been acquitted of it in a state court. *United States* v. *Smith,* 446 F.2d 200 (4th Cir. 1971). In *Smith,* the court cautioned that the record did not adequately reveal whether the two offenses were in fact the same and speculated that the "dual sovereignty" principle on which its decision was based might soon be abandoned. The Fourth Circuit[3] elected to leave such a major development to this Court. 446 F.2d at 203, fn. 1.

Although not yet abandoned in all cases to which it has been applied, the "dual sovereignty" principle has suffered considerable erosion in recent years and has been expressly abandoned by this Court in at least three situations. In *Elkins* v. *United States,* 364 U.S. 206 (1960) the Court ruled that evidence illegally seized by state authorities could not be used by federal authorities. In *Murphy* v. *Waterfront Commissioner,* 378 U.S. 52 (1964), the Court held that a grant of

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[3] The Fourth Circuit has evidenced greater tolerance than other courts for the use of evidence of prior offenses. Compare *United States* v. *Mastrotatoro,* 455 F.2d 802 (4th Cir. 1972) (noting the "lavish" use of prior offenses evidence but upholding the conviction) with *United States* v. *Burkhart,* 458 F.2d 201 (10th Cir. 1972) (reversing a conviction due to the use of a remote prior offense); *State* v. *Santiago,* 492 F.2d 657 (Hawaii 1972) (adopting a rule forbidding impeachment of testifying defendants by the use of prior offenses); *State* v. *Pricur,* .. La. .., 12 Cr. L. 2512 (La. 1973) (establishing strict guidelines for the use of prior offenses evidence). The use of prior offenses evidence merely to blacken the defendant's image is being increasingly condemned. See *Loper* v. *Beto,* 405 U.S. 473 (1972) (defective prior convictions). The Fifth Circuit has concluded it is "fundamentally unfair" to admit evidence of a prior offense where, as here, the defendant was acquitted of it. *Wingate* v. *Wainwright, supra.*

immunity to a witness by a state authority barred the federal government from using the testimony compelled under the state's immunity grant. And in *Waller* v. *Florida*, 397 U.S. 387 (1970) the Court most recently rejected the "dual sovereignty" theory calling it an "anomaly" as applied to successive prosecutions by a municipality and a state. Prior to *Elkins*, *Murphy* and *Waller*, a second prosecution would have been allowed in each of those situations under the dual sovereignty rule.

Of those decisions, *Murphy* v. *Waterfront Commissioner* presents a striking parallel to the case at bar. The state grant of immunity precluded federal use of immunized testimony. Here the state in which Petitioner was acquitted is barred from using evidence of that matter against Petitioner by virtue of the Fifth Amendment's principle of double jeopardy that is equally as fundamental[4] as the privilege involved in *Murphy*. See *Ashe* v. *Swenson*, *supra*. The Court ruled in *Murphy* that "dual sovereignty" did not justify a departure from the self incrimination privilege. That ruling is a strong precedent that "dual sovereignty" is likewise not a compelling reason to depart from the Fifth Amendment's equally fundamental double jeopardy privilege. In deciding

[4] This Court has acknowledged the impact of a prior offense in a criminal trial stating in *Burgett* v. *Texas*, 389 U.S. 109 (1967) that admission of a "constitutionally infirm" prior conviction was error and was not cured or rendered harmless by instructions. See also *Loper* v. *Beto*, *supra*. If prior offenses that are accepted as relevant and are evidenced by convictions are, nevertheless, rendered inadmissible for reasons of fundamental fairness because they were obtained without the aid of counsel, it would appear to be at least worthy of resolution whether fundamental fairness forbids using a prior offense marked by an acquittal on the merits though by a state court.

Murphy, the Court correctly concluded that the Fifth Amendment privilege against compulsory self incrimination would mean very little if a witness could be forced to testify by a state grant of immunity and then be prosecuted with the use of that evidence by the federal government. Likewise, the double jeopardy and collateral estoppel principles of the Fifth Amendment will mean very little if he can be brought to trial and acquitted in a state court and then prosecuted with the use of that evidence a second time in a federal court.

Abandonment of the dual sovereignty rule (the only distinguishing feature between the case at bar and *Wingate* v. *Wainwright*, *supra*) is the subject of growing discussion in periodicals, case law and authoritative studies. See *Collateral Estoppel in Criminal Prosecutions: Time to Abandon the Identity of Parties Rule*, 46 So. Cal. L. Rev. 922 (1973); *Report of the National Commission on Reform of Federal Criminal Laws*, p. 61, comment to § 704; Cipes, *Criminal Defense Techniques*, Appendix A, *The ABA Standards for Criminal Justice*, § App. 08, p. App. 23.

This case is particularly worthy of review because the "dual sovereignty" rule is especially inappropriate here where a community of interests of the two sovereigns is an essential feature of the statute under which Petitioner was charged. Under the Travel Act, the federal government is empowered to act on behalf of state interests to prosecute state crimes which have been incorporated into a federal jurisdictional envelope. The state bribery statute is expressly charged in the federal indictment. Furthermore, the offense of which Petitioner was acquitted in state court was not an offense against federal law. Application of the rule of collateral estoppel would in no way deprive the fed-

eral government of its sovereign right to prosecute an offense against it. The "dual sovereignty" issue is thus presented here in a compelling statutory framework and trial setting. Full review and careful consideration should be given to eliminating "dual sovereignty" as an exception to the collateral estoppel rule of *Ashe* v. *Swenson, supra.*

2. The Absence of Any Interstate Travel Caused or Engaged in by Petitioner Precludes Federal Jurisdiction Under The Travel Act

The Travel Act prohibits the use of interstate facilities in furtherance of specified criminal conduct, including bribery. However, mere incidental use of a facility of interstate commerce is insufficient to confer jurisdiction under the Act. *Rewis* v. *United States,* 401 U.S. 808 (1971); *United States* v. *Botticello,* 422 F.2d 832 (2d Cir. 1970); *United States* v. *Altobella,* 442 F.2d 310 (7th Cir. 1971). Compare *United States* v. *Hawthorne,* 356 F.2d 740 (4th Cir. 1966), cert. denied 384 U.S. 908 (1966); *United States* v. *Judkin,* 428 F.2d 333 (6th Cir. 1970). Congress enacted the Travel Act with an acute awareness that "an expansive Travel Act would alter sensitive federal-state relationships, could over extend limited federal police resources, and might well produce situations in which the geographic origin of [interstate travelers], a matter of happenstance, would transform relatively minor state offenses into federal felonies". *Rewis* v. *United States,* 401 U.S. 808 at 812 (1972) [5]

[5] Similar apprehensions resulted in a limited construction of the Mann Act, 18 U.S.C. § 2421, the juridical scope of which, as refined by judicial decision, parallels the Travel Act. See *Mortensen* v. *United States,* 322 U.S. 369 at 376 (1940); *Twitchell* v. *United States,* 313 F.2d 425, 429 (9th Cir. 1963), *vacated and remanded sub nom. Rogers* v. *United States,* 376 U.S. 188 (1964), *after remand* 330 F.2d 759 (9th Cir. 1964).

The sole jurisdictional predicate for this prosecution was the movement of a check from the District of Columbia "into Baggett's possession in Maryland". (App. 2a) Not only were Petitioner and his co-defendant both residents of Maryland, but that state was the focus of all of their alleged conduct. There is no suggestion that either was involved in organized crime, or that anyone other than Maryland residents were even remotely involved in their activities.[6] Their activity was "essentially local" and thus wholly outside of the Act's ambit. See *United States* v. *McCormick*, 442 F.2d 316 at 318 (7th Cir. 1971). Such conduct does not necessarily require federal assistance. See *United States* v. *Altobella, supra.* Their conduct clearly did not involve the requisite "significant use of a facility of interstate commerce" required by the Seventh Circuit. *United States* v. *Altobella, supra,* 442 F.2d at 318.

This case presents an "essentially local" Travel Act prosecution which expands the Act to its broadest scope. A defendant who did not cross state lines, use an interstate facility or conspire with or cause anyone else to do so was charged based on mere passive receipt of a check. In supplying particulars of its one count indictment to explain the alleged basis for federal jurisdiction with respect to Petitioner's activity, the Government said that Petitioner could "reasonably foresee" that interstate movement would be involved in this matter. (Jt. App. 30).

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[6] Indeed all but three of the witnesses called by the Government were Maryland residents at the time of trial. The testimony of these witnesses was of little moment; and, in any event, each was subject to the process of the Maryland courts by virtue of the Maryland Uniform Law to Secure Attendance of Witnesses from Within or Without the State in Criminal Proceedings. Md. Code Ann., Art. 27, §§ 617-19.

Shortly after that Bill of Particulars was filed, this Court decided *Rewis* v. *United States,* 401 U.S. 808 (1972) and held that "reasonable foreseeability" of interstate movement as a basis of federal criminal jurisdiction does not merit acceptance. 401 U.S. 808 at 814. After the *Rewis* decision, the Government promptly amended its particulars, to delete its allegation of reasonable foreseeability but it could not change its proof. Reasonable foreseeability of interstate delivery or mailing of a check by Rocks was the most that the Government showed. Yet contrary to the decisions in *Rewis, Altobella* and *McCormick, supra,* the Fourth Circuit held that the Act applied.

Whether the Travel Act applies to a defendant and a transaction that is devoid not only of "significant use of a facility of interstate commerce" as required by the Seventh Circuit but in fact may fairly be said to be as devoid of interstate activity as is realistically possible in a mobile world, is an issue worthy of review.

The proper application of the delicate jurisdictional features of the Travel Act in jury cases such as this where the Act is invoked is especially worthy of review here. Contrary to the clear import of the Fourth Circuit's own decision in *United States* v. *Salsbury,* 430 F.2d 1045 (4th Cir. 1970), the trial court refused Petitioner's request to instruct the jury in any way with respect to the need to find that Petitioner had "knowledge and intent" concerning the single interstate act alleged in the indictment.[7]

[7] The trial court instructed the jury that the elements of the offense were only that Petitioner: (1) "caused another person to travel in interstate commerce"; (2) that he had the "intent to facilitate the promotion . . . of bribery . . ."; and (3) he "thereafter performed in the State of Maryland one or more acts which

3. Forbidding Defense Cross-Examination of a Key Government Witness Confined in a Federal Prison Hospital to Show His Medicine for Hodgkins Disease Was Withheld Was a Denial of the Right to Confrontation

The trial court barred defense cross-examination of a federal prisoner, William Stevens, as to motive. He suffered from Hodgkins disease and based thereon had filed a motion for the reduction of his sentence.

Stevens was one of the Government's principal witnesses. He had been told by the Government that it would not oppose his pending motion for a reduction in sentence if he testified "truthfully". During direct examination the Government disclosed the fact of this agreement but it failed to reveal that when the agreement was reached, Stevens had been deprived of some fifteen doses of his medicine over a period of five days and was mentally and physically debilitated. Because of these facts the defense attempted to cross examine Stevens to show, as this Court had held in *Alford* v. *United States,* 282 U.S. 687 (1930) it had an undeniable right to do, that his testimony was "affected by fear or favor growing out of his detention." 282 U.S. at 693. Nevertheless, the trial court barred this cross-examination into Stevens' motive to testify in a way that incriminated defendant in order to gain release from such total dependence on the Government. There were clear indications that Stevens' testimony was prompted by a strong need to conform his testimony to his previous statements to the Government. Yet the defense was not allowed to disclose to the jury the motive for his doing so. He was obviously affected by fear

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facilitated the promotion . . . of such bribery". (Jt. App. 194) Under this charge, the jury was inferentially told that it was unnecessary for it to find if Petitioner knew, should have known, or intended that there would be interstate activity.

growing out of his detention. *Alford* v. *United States, supra.* The right to confrontation requires that a defendant be permitted to reveal to the jury such a motive of a witness who is heavily dependent on a drug or, as here, a vital medication. *United States* v. *Kinnard,* 465 F.2d 566 (D.C. Cir. 1972). Such witnesses are "inherently unreliable". 465 F.2d at 571.

The Court of Appeals held that such denials do not affect "substantial rights". (App. 3a) Cross-examination to reveal a motive of a key witness to lie, however, is fundamental to a fair trial. *United States* v. *Masino,* 275 F.2d 129 (2d Cir. 1960)

This case thus presents a denial of the right to conduct cross-examination under the *Alford* rationale that is worthy of review. The extreme fear that may have been generated by the withholding, intentionally or negligently, of medicine needed to control a cancerous blood disorder may so disqualify a witness that a loss of the right to reveal such an extreme motive to give incriminating testimony is a denial of due process.

CONCLUSION

For the foregoing reasons, a Writ of Certiorari should issue to review the Judgment and Opinion of the United States Court of Appeals for the Fourth Circuit.

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APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 72-1548

UNITED STATES OF AMERICA, *Appellee*,

versus

JESSE S. BAGGETT, *Appellant*.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Alexander Harvey, II, District Judge.

Argued October 4, 1972. Decided June 19, 1973.

Before Haynsworth, Chief Judge, Bryan, Senior Circuit Judge, and Russell, Circuit Judge.

John M. Bray, (John R. Risher, Jr., and Arent, Fox, Kinter, Plotkin and Kahn on brief) for Appellant; Russell T. Baker, Jr., Assistant United States Attorney, (George Beall, United States Attorney, on brief) for Appellee.

PER CURIAM:

The defendant, Baggett, and Ralph D. Rocks were jointly charged with a violation of the Travel Act.* Specifically, they were charged with causing the interstate movement of a $3500 check drawn by Rocks in the District of Columbia which Baggett used in Maryland to purchase a tractor

* 18 U.S.C. § 1952 and 18 U.S.C. § 2.

for use on his firm. Baggett, first tried after a severance, was convicted.

From 1954 until he resigned in 1970, Baggett was a member of the Board of County Commissioners of Prince George's County, Maryland. From December 1964 until his resignation, he was the Chairman of that Board. The Board had final authority over all zoning matters and proceedings.

Rocks was a prosperous builder and developer, based in the District of Columbia. Between 1962-1968, he was a frequent applicant for variances and zoning changes in Prince George's County, Maryland. Typically, he sought increased population density rulings and other changes which would enhance the value of lands he had acquired for development and their development potential. His applications usually received favorable action by the Board of County Commissioners until Baggett learned of the governmental investigation of his receipt of the check mentioned above and his use of it for the purchase of the tractor.

The check was made payable to the implement dealer, but the testimony showed that the check came into Baggett's possession in Maryland, that he took the check to the implement dealer and used it to pay for the tractor Baggett had selected. There was some effort on the part of the defense in Baggett's trial to show that the tractor was used only infrequently on Baggett's farm, but there was abundant evidence to support a finding that it was maintained on that farm and used regularly, or exclusively, there until the matter came under investigation.

The Government's evidence did not show a specific *quid pro quo* from Baggett to Rocks in return for the $3500 check. It did show a course of conduct of favors and gifts flowing from Rocks to Baggett. These included trips to Florida for Baggett and a William Stevens, who was in a position to expedite zoning applications on their way

to the Board of County Commissioners. It included a check made to cash, drawn by the Maryland zoning attorney for Rocks, which found its way into Baggett's checking account, though, after inquiry, it was claimed that that check represented a loan, and a like amount was repaid by Baggett to the lawyer.

The proof also showed receipt by Baggett of favors from others who had received favorable zoning rulings. After one such ruling, a man in the construction business built an addition to Baggett's house, while another in the paving business paved a road on Baggett's farm. Baggett was billed for neither and paid for neither. Baggett had been tried in a state court for the acceptance of the addition to his house, but the charges were thrown out on the ground that the bare fact of no billing and nonpayment was insufficient to show evil intent.

One of Baggett's contentions on this appeal is that the references to the house addition violated the double jeopardy principle. He was not being tried for that, however, and the Government was entitled to show a whole succession of such events, which, by their pattern, would warrant the inference of evil intention, which focus on the single event of the house addition did not.

The many instances of favors and gifts accepted by Baggett from Rocks and others receiving favorable rulings from the Board of County Commissioners were ample to show Baggett's corruption by the unprincipled greed of a wealthy man and Baggett's preference for favors and gifts over his public duty. The jury was clearly authorized to draw the inference and conclusion that the $3500 check represented a payment by Rocks to Baggett for continuing favorable zoning rulings.

After consideration of all of Baggett's claims of trial error, we find none affecting his substantial rights or the fairness of the trial. His conviction will be affirmed.

Affirmed.

Constitutional and Statutory Provisions Involved

United States Constitution

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall provide property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his deference.

Statute Involved

18 U.S.C. §1952:

(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprsoned for not more than five years, or both.

(b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor, narcotics, or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

[Filed July 26, 1973 William K. Slate, II, Clerk]

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 72-1548

UNITED STATES OF AMERICA *Appellee,*

v.

JESSE S. BAGGETT, *Appellant.*

Appeal from the United States District Court for the District of Maryland at Baltimore.

Upon consideration of the Petition for Rehearing *en banc*, and with the concurrence of the panel members and in the absence of a request for a poll of the whole court,

IT IS ORDERED that the Petition for Rehearing *en banc* be, and it hereby is denied.

FOR THE COURT:

/s/ CLEMENT F. HAYNSWORTH, JR.
Chief Judge, Fourth Judicial Circuit